and architect's plans for the construction of the bungalow have been approved by the authorities. This claim too has been rejected by the Collector. We think that the Collector was right in doing so.

The amount of compensation awarded by us on the basis of the market value on the 22nd April, 1955, under paragraph (a) of section 2 of the Land Acquisition (Temporary Provisions) Ordinance, 1955, is $610,125. No amount has been deducted under paragraph (b). The sum of $20,000 has been awarded under paragraph (d). No amount has been awarded under paragraphs (c), (e) or (f).

As the claim of the applicants exceeds the amount awarded to them by more than twenty per cent they are not entitled to their costs: this is laid down in section 34(1)(c) of the Land Acquisition Ordinance.

Order accordingly.

[It is directed by the Judge that each assessor shall receive a fee of $150 per day for five days and that the assessors' fees shall be paid by the Collector.]

Solicitors: *Mallal & Namazie; Allen & Gledhill.*

SOH CHEOW HOR v. REGINA

[C. C. A. (Rose C.J., Wee Chong Jin and Ambrose JJ.) July 6, 1960]

[Criminal Appeal No. 10 of 1960]

Criminal Law — Penal Code, s.300 — Special exceptions — Evidence Ordinance, s.106 — Burden of proof — Summing up — Non-direction.

When an accused person endeavours to bring himself within one of the special exceptions under section 300 of the Penal Code, it is sufficient for his purpose if a reasonable doubt is raised in the minds of the jury as to whether or not the necessary factors exist. If as a result of the evidence of the whole case, taken and considered together, the jury find themselves in genuine doubt as to whether or not the case falls within one of the exceptions, then their verdict on the point must be in favour of the accused.

Nowhere in the summing up was this made clear to the jury. Verdict of guilty of culpable homicide not amounting to murder was accordingly substituted for that of guilty of murder.

[Editorial Note: In this case the learned counsel for the appellant submitted that when the accused raises the issue of a general exception under Chapter IV of the Penal Code, or special exceptions under section 300 of the Penal Code, section 106 of the Evidence Ordinance applies, placing the burden on him of proving the existence of circumstances bringing the case within these exceptions. He further submitted that codifying Acts should be read in harmony with the law existing at the time of codification (*Yeo Hock Cheng* v. *Rex* [1938] M.L.J. 104), and section 106 of the Evidence Ordinance should be read as merely incorporating the English rules of burden of proof and onus which in the case of exceptions require the accused to raise no more than a reasonable doubt in the mind of the jury, except in the case of insanity where the common law calls for a balance of probability. In support of his submissions the learned counsel quoted the following cases: (1) *Damapala* (A.I.R. 1937 Rangoon 83); (2) *Lim Tong* [1938] M.L.J. 41; (3) *Chia Chan Bah* [1938] M.L.J. 147; (4) *Chan Kau* [1955] A.C. 206; [1955] 1 All E.R. 266; (5) *Parboo* A.I.R. 1941 All. 147; (6) *Gowara Pandey* A.I.R. 1949 Nagpur 160/165.]

COURT OF CRIMINAL APPEAL.

D. S. Marshall for the appellant.

A. W. Ghows (Deputy Public Prosecutor) for the respondent.

Rose C.J.: The appellant was convicted of murder.

The facts of the case, briefly, were that at about 8.00 p.m. at Stanley Street on the 20th of September 1959 the deceased, a more strongly built man than the appellant, started an argument with the appellant, which led to a fight between them.

It must be assumed from the verdict of the jury that they accepted the prosecution evidence that the appellant during the fight drew a knife and inflicted a fatal stab wound in the abdomen of the deceased.

The deceased died some thirty hours later from shock and haemorrhage as a result of what the doctors described as a penetrating incised wound on the left side of the abdomen.

The principal matter to be determined is whether on these facts the relevant exceptions to section 300 of the Penal Code i.e. sudden fight, provocation, or exceeding the right of self-defence, were adequately put to the jury by the learned trial Judge.

The matter is of particular importance in the present case as the facts which one must presume to have been found by the jury are clearly borderline as far as these issues are concerned.

With regard to the matter of sudden fight, which the learned trial Judge appeared to have considered to have been the most relevant of the exceptions, he stated at page 132 of the record:—

> "There are four elements to be considered, members of the jury. First, the fight must be sudden; secondly, there must be an absence of premeditation — it will not do if a man has time to think over what he should do and then kill the person with whom he has been fighting; thirdly, no undue advantage must be taken by the accused; fourthly, the accused must not have acted in a cruel or unusual manner. If these factors exist in this case, then you may find the accused guilty of culpable homicide not amounting to murder. But again, at the risk of repeating myself, I must warn you that you can only arrive at that verdict if you are satisfied that the accused used a knife to stab the deceased."

Whatever the position may have been in the past, it appears now to be the accepted rule that when an accused person endeavours to bring himself within one of the exceptions, it is suffi-

cient for his purpose if a reasonable doubt is raised in the minds of the jury as to whether or not the necessary factors exist. If as a result of the evidence of the whole case, taken and considered together, the jury find themselves in genuine doubt as to whether or not the case falls within one of the exceptions, then their verdict on the point must be in favour of the accused.

Nowhere in the summing up is this made clear to the jury in regard to any of the three exceptions to which we have earlier referred. It follows in view of what we have already said as to the borderline nature of the evidence on these matters that it is impossible for us to say that the jury, if fully directed, would necessarily still have found the appellant guilty of murder.

Having regard to our view of the above matters it is unnecessary to consider the other points that were raised in the appeal.

It was for these reasons that at the conclusion of the hearing of the appeal we set aside the verdict of guilty of murder and substituted one of culpable homicide not amounting to murder; and imposed a sentence of 5 years' imprisonment.

Verdict substituted.

Solicitors: *Marshall & Chung.*

THEVATHASAN v. THEVATHASAN

[A. C. J. (Ambrose J.) July 14, 1960]

[Singapore — District Court Appeal No. 48 of 1959]

Maintenance — Potential earning capacity of wife — Maintenance order — Magistrate's discretion — Whether Court should interfere — Married Women and Children (Maintenance) Ordinance (Cap. 44), s.2(3).

This was an appeal against a maintenance order made by a Magistrate. The parties were married in 1955. They had quarrels over the wife's dowry and in 1956 the appellant sent the respondent to her parents' home to settle the matter of her dowry and to change her attitude towards the appellant completely. In June 1957, the appellant, on hearing from the respondent that she was planning to return to him, wrote to her that she was to return only when sent for and that he had no intention of meeting her at the Singapore Airport. Both in 1958 and 1959 she came to Singapore and made many attempts to meet the appellant but was unsuccessful. She then made a complaint to a Magistrate about the appellant's failure to maintain her. The appellant's reason for not sending for the respondent was that he was not satisfied that she had changed her attitude towards him. Another reason the appellant had for not sending for the respondent was that her father had not given her the property which he promised to give her on her marriage. The Magistrate came to the conclusion that the appellant was wholly to blame for the break-up of the marriage, and awarded maintenance at the rate of $450 a month effective from July 1, 1957.

Two points arose for determination: (i) whether the potential earning capacity of the respondent should have been taken into consideration in assessing maintenance; and (ii) whether the Court should interfere with the exercise of the Magistrate's discretion as regards the date of commencement of the maintenance order.

Held: (1) the learned Magistrate was wrong in not taking into consideration the potential earning power of the respondent and therefore the maintenance awarded should be reduced to $300/- a month;

(2) the date fixed by the learned Magistrate for the commencement of the maintenance order resulted in injustice being done to the appellant and the date of the commencement of the maintenance should therefore be altered to a date nearer the date when the respondent made the complaint to the Magistrate, that is the 1st February, 1959.

Cases referred to:—

(1) *Rose* v *Rose* [1950] 2 All E.R. 311.

(2) *Evans* v. *Bartlam* [1937] 2 All E.R. 646.

The following cases were also cited in argument:

Balasingam v. *Public Prosecutor*, [1959] M.L.J. 193; *Rex* v. *Low Toh Cheng*, [1941] M.L.J. 1; *Hasting* v. *Hasting* [1947] 2 All E.R. 744; *Clifton* v. *Clifton* [1936] P. 182; *Le Roy-Lewis* v. *Le Roy-Lewis* [1954] 3 All E.R. 57; *J.* v. *J.* [1955] 2 All E.R. 85 at p. 91; *McLellan* v. *McLellan* [1954] 1 All E.R. 1; *Stokes* v. *Stokes* [1911] P. 195; *Raquiza* v. *Raquiza* [1947] M.L.J. 202; *Acworth* v. *Acworth* [1942] 2 All E.R. 704; *Edwards* v. *Edwards* (1868) 17 L.T. 584; *Wood* v. *Wood* [1891] P. 272; *Page* v. *Page* [1958] C.L.Y.B. para. 1042; *Stephenson* v. *Stephenson* (1925) 41 T.L.R. 550; *Donaldson* v. *Donaldson* [1958] 2 All E.R. 660; *Griffith* v. *Griffith* [1957] 1 All E.R. 494; *Ward* v. *Ward* [1947] 2 All E.R. 713; *Wakeford* v. *Wakeford* [1953] 2 All E.R. 827; *Stibbe* v. *Stibbe* [1931] P. 105.

DISTRICT COURT APPEAL.

D. S. Marshall for the appellant.

Lim Kean Chye for the respondent.

Ambrose J.: Two points arose for determination in this appeal against a maintenance order made by a Magistrate. The first was whether the potential earning capacity of the respondent should have been taken into consideration in assessing maintenance. The Magistrate ignored it, apparently taking the view that, as the respondent had not been working during her married life, she should not be made to feel that she would have to work to relieve the appellant of a financial liability which he himself had created by causing the break-up of the marriage. Here it must be pointed out that the Court of Appeal in England stated in the case of *Rose* v. *Rose*,(1) that the question whether the potential earning capacity of a wife is to be taken into account in assessing maintenance depends on the facts of each case and no general rule can be laid down. In the same case Denning L.J. said (at page 313):

". . . . if she (i.e. the wife) is a young woman with no children, and obviously ought to go out to work in her own interest, but does not, then her potential earning capacity ought to be taken into account . . . . ."

In the present case I took the view that the respondent ought to go out to work in her own interest. She is a young woman with no children, and work with its attendant responsibilities would help to develop her character along the right lines. She was married to the appellant on the 3rd September, 1955. They went to England in April, 1956. There they had quarrels over her dowry, and her relations with her husband were not always happy. On their return in November, 1956, the appellant sent her to her parents' home in Penang to settle the